

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of)	
DESHAUN MARTIN against DTE ELECTRIC)	Case No. U-18171
COMPANY)	
_____)	

At the April 13, 2017 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER

On September 12, 2016, DeShaun Martin filed a complaint against DTE Electric Company (DTE Electric) alleging that the power usage at his residence had been incorrectly measured and that he should be able to continue to pay \$65.00 per month as agreed upon. According to DTE Electric, a previous settlement was reached with Mr. Martin to remove late fees totaling \$25.85 that left a balance owed of \$372.86. The agreement further provided for Mr. Martin to be placed on the Shutoff Protection Plan (SPP) at the \$65.00 per month. According to DTE Electric, Mr. Martin's electrical usage increased resulting in a balance increase to \$1,200.16. DTE Electric informed Mr. Martin of the increased electric usage and provided a payment coupon with an increase to \$140.00 per month for his SPP payments beginning with his bill due June 23, 2016.

On January 11, 2017, an evidentiary hearing was held before Administrative Law Judge Suzanne D. Sonneborn (ALJ). At the hearing, Mr. Martin appeared *pro se*. Mr. Martin testified

that he entered into the settlement agreement on June 19, 2014, to resolve previous billing and payment issues with DTE Electric. Tr 9. Mr. Martin further testified that all the previous issues and amounts owed were resolved when he entered the settlement agreement and that he agreed to pay \$65.00 per month as part of that agreement. Tr 10. Mr. Martin further testified that the settlement agreement had no end date and that he had agreed to make the \$65.00 monthly payment to protect himself from incurring similar issues with DTE Electric that necessitated the settlement. *Id.* Mr. Martin further testified that he could not possibly have the outstanding balance DTE Electric claims because his energy usage could not be higher because he was rarely at home during the time period in question. *Id.* Mr. Martin did, however, state that his current energy usage has increased due to him being home more often and increased occupancy at his residence. Tr 11.

DTE Electric's witness, Lisa Shaw, an Executive Customer Consultant with the utility, provided direct testimony and was on cross-examined. Ms. Shaw testified that Mr. Martin's \$65.00 payment was just to enroll him in SPP to keep his account from being shutoff. Tr 21-22. Ms. Shaw testified that Mr. Martin was informed that the utility had reviewed his account and that, due to his account balance, change in price, and/or average energy usage that his SPP payment would increase to \$140.00 per month. Tr 21. The account balance on May 2, 2016, was \$1,200.16. *Id.* Ms. Shaw testified that Mr. Martin was taken off the SPP on October 28, 2016, for not paying the increased amount but has continued to pay the \$65.00 per month according to his understanding of the settlement agreement. Tr 40-41. Ms. Shaw confirmed that Mr. Martin had been on the current SPP for over two years before he was eventually taken off by DTE Electric. Tr 31. Ms. Shaw confirmed that the settlement agreement contained no end date. *Id.* Ms. Shaw

did testify to an email¹ to Mr. Martin dated May 22, 2014, which indicated that his current balance was \$394.05 and that Mr. Martin could be placed on the SPP at zero down and with a payment of \$85.00 per month. Tr 20. The email further provided that Mr. Martin “be advised that the computer system will evaluate your payment plan to ensure that the balance is being paid, therefore your payment plan could change every six months or so.”

Following the conclusion of the testimony, the ALJ issued an oral Proposal for Decision (PFD). Tr 43-48. The ALJ determined that Mr. Martin had presented a valid dispute over the terms of the settlement agreement and that DTE Electric must demonstrate that it had not violated the Commission’s Consumer Standards and Billing Practices for Electric and Gas Residential Service (Billing Rules), more specifically R 460.1629(2)², which provides, in part, that in case of a dispute over the terms of the settlement agreement, the utility shall have the burden of proving that the customer understood and accepted the terms of the settlement agreement. The ALJ determined that DTE Electric did not meet its burden to prove that Mr. Martin understood and accepted that the \$65.00 SPP payment “would end in six months or 12 months or two years because that term was simply not confirmed adequately with Mr. Martin in advance of the execution of that settlement agreement” Tr 46. The ALJ then recommended that the Commission dismiss the entire outstanding balance on Mr. Martin’s bill of \$1,200.16. Tr 46-47.

On February 2, 2017, both the Commission Staff (Staff) and DTE Electric filed exceptions. The Staff did not have any objection to the ALJ’s recommendation but merely asks the Commission to clarify the standing of Mr. Martin’s SPP moving forward. The Staff requests that

¹ A string of printed email communications between Ms. Shaw and Mr. Martin were entered into the record as one exhibit.

² The ALJ cited R 460.1629(2) but R 460.155(2) applies to residential customers under the Billing Rules.

once the Commission zeroes out the outstanding balance, Mr. Martin be removed from DTE Electric's SPP and return to his status as a regularly billed customer.

DTE Electric takes exception and argues that the string of emails between the utility and Mr. Martin prior to executing the terms of the settlement agreement demonstrate that Mr. Martin understood that the SPP might be reevaluated to determine if the SPP payment was sufficient. DTE Electric also takes exception to the ALJ's recommendation to zero out Mr. Martin's outstanding balance. DTE Electric argues that there is no lawful basis for the Commission to alter Mr. Martin's account balance. DTE Electric argues that to zero out the account balance would essentially be awarding damages to Mr. Martin and that the parties never contemplated providing Mr. Martin unlimited service for \$65.00 per month. DTE Electric further argues that the Commission has no authority to rewrite the terms of the settlement agreement. DTE Electric's exceptions, p.18.

In this case, the Commission finds that the ALJ's recommendation should be adopted. The Commission is not rewriting the terms of the settlement agreement, as DTE Electric argues, but finds that the lack of definite terms within the settlement agreement providing for an end date for the SPP payment or explaining that the SPP payment may be altered leaves the Commission with no other viable option. The settlement agreement resolved a dispute between Mr. Martin and the utility. In signing the settlement agreement, Mr. Martin agreed to give up various rights in exchange for: (1) being placed on DTE Electric's SPP for \$65.00 per month, (2) the removal of late fees totaling \$25.85. According to the evidence, Mr. Martin complied with the terms of the settlement agreement by continuing to pay the \$65.00 per month. Although it is understandable why DTE Electric assumes that the settlement agreement does not contemplate removal of outstanding balances for service over and above the \$65.00, it was incumbent upon the utility

pursuant to R 460.155(2) to make that term clear to Mr. Martin. The Commission is also not persuaded that the May 22, 2014 email from Ms. Shaw conveyed to Mr. Martin that the \$65.00 payment he later agreed to might go up. The Commission finds that DTE Electric did not meet its burden in this case and zeroing out Mr. Martin's account for any outstanding balance over and above the \$65.00 per month is the most logical remedy.

The Commission agrees with the Staff, that moving forward from the date of this order, Mr. Martin shall be removed from DTE Electric's SPP program and will return to his status as a regularly billed customer.

THEREFORE, IT IS ORDERED that:

A. DTE Electric Company shall remove any outstanding balance for charges over the agreed upon \$65.00 per month on the account in the name of DeShaun Martin for electric service rendered at his billing address.

B. From the date of this order, the account of DeShaun Martin shall be removed from DTE Electric Company's Shutoff Protection Plan and DeShaun Martin shall be returned to his status as a regularly billed customer.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order under MCL 462.26. To notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscdockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner

Rachael A. Eubanks, Commissioner

By its action of April 13, 2017.

Kavita Kale, Executive Secretary